IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.107 OF 1996

Smt.Chanchalben Amritlal Patel
Indian Inhabitant, resident at
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and
Competent Authority, Taluka
Borivali, having his office at
M.G.B.Building No.34, 1st Floor,
Siddharth Road, S.V.Road,
Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra
Slum Areas (I.C. & R.) Tribunal
having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Somchand K.Panchal
Room No.7. ..
6. Chaturbhuj J.Patel
Room No.2 ..
7. Murlidhar Pandya
Room No.2 and 5 ..
8. Lilavtiben D. Gujjar
Room Nos.1, 4 to 7) ..
all Indian Inhabitants,
residing at Tamkuwala Chawl,
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.108 OF 1996

Smt.Laxmiben P.Bharwad,
C.A. Navinchandra P.Bharwad,
Indian Inhabitant, residing at
Popat Jiva Building,
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and Competent Authority, Taluka Borivali, having his office at M.G.B.Building No.34, 1st Floor, Siddharth Road, S.V.Road, Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra Slum Areas (I.C. & R.) Tribunal having its office at Grih Nirman Bhavan, Bandra (East), Bombay 400 032. ..
3. State of Maharashtra Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group Co-op. Housing Ltd. having office at Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. ..
5. Jamnadas M.Khakhar Navinchandra Popatlal Chawl Room No.A/1 ..
6. Narsibhai Gughabhai Shop No.2 A, ..
7. Manharbhai Chawda Shop No.A-6 ..
8. Raja Nanji Patel Shop No.A-7, ..
9. Jethalal Kalidas Patel Room No.B-7, ..
10. Hemant Waman Amre Room No.B-5 ..
11. Natwarlal Vithaldas Chauhan Room No.B-2 ..

all of Bombay, Indian Inhabitants, residing at Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.109 OF 1996

Smt.Shiromani Vijayabahadur Singh Indian Inhabitant, residing at 203, Ganesh Apartment, 2nd Floor, Raheja Township, Opp.State Bank Colony, Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and

Competent Authority, Taluka
Borivali, having his office at
M.G.B.Building No.34, 1st Floor,
Siddharth Road, S.V.Road,
Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra
Slum Areas (I.C. & R.) Tribunal
having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra
Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Ramabhai Sedhabhai Satware
Chawl No.3, Room No.6,
6. Balvir Boluram Sharma
Chawl No.3, Room No.7, ..
7. Nakku Ramsurat Mistry
Chawl No.3, Room No.8. ..
8. Jagannath Mataprasad Yadav
Chawl No.3, Room No.1. ..
9. Jokai Sukhdev Mistry
Chawl No.3, Room No.2, ..
10.Rajpat Durgacharan Yadav
Chawl No.3, Room No.3, ..
11.Laxminarayan B.Gupta
Chawl No.2, Room No.1, ..
12.Munnidevi Ramesh Kanaujia
Chawl No.2, Room No.2, ..
13.Amarnath Bhairav
Chawl No.2, Room No.4, ..
14.Ramchandra Vishwakarma
Chawl No.1, Room No.1, ..
15.Nanjibhai Gamarbhai Patel
Chawl No.1, Room No.3, ..
16.Jairam Govind Jagade
Chawl No.1, Room No.6, ..
17.Laltaprasad M. Yadav
Chawl No.1, Room No.10, ..
18.Prabhavathi S.Taylor
Chawl No.1, Room No.15, ..
19.Anilkumar Shantilal Yadav
Chawl No.1 Room No.14, ..
20.Prafulkumar Shanitlal Taylor
Chawl No.1, Room No.16, ..
all Indian Inhabitants,
residing at Shiromani

Vijaybahadur Chawl, Dhanjiwadi,
Rani Sati Marg, Malad (East),
Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.110 OF 1996

Smt.Laxmanbhai Ravji Patel
C.A. to Dhanji Harji Patel
Indian Inhabitant, residing at
Kantikunj Building,
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Appellant.
Versus
1. Deputy Collector (ENC) and
Competent Authority, Taluka
Borivali, having his office at
M.G.B.Building No.34, 1st Floor,
Siddharth Road, S.V.Road,
Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra
Slum Areas (I.C. & R.) Tribunal
having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra
Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Jyotiben Savabhai Patel
Room No.17 and 18. ..
6. Jagdish Pasoo Dhobi,
Room No.21 and 10 ..
7. Babulal Hargovind,
Room No.15 ..
all Indian Inhabitants,
residing at Dhanjiwadi,
Rani Sati Marg, Malad (East),
Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.111 OF 1996

Shri Trambak Dhondu Mistry
C.A. S.R.Garchar

Indian Inhabitant, residing at
D.N.Patel Chawl, Room No.21,
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and
Competent Authority, Taluka
Borivali, having his office at
M.G.B.Building No.34, 1st Floor,
Siddharth Road, S.V.Road,
Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra
Slum Areas (I.C. & R.) Tribunal
having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra
Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Hemlata Devji Shah,
"F" Chawl, Room No.1, ..
6. Vijay Jaysukhlal Makwana,
"A" Chawl, Room No.1 ..
7. Kirikumar Babulal Joshi
"A" Chawl, ..
8. Smt.Indumati Batukrai
"B" Chawl, Room No.6, ..
9. Natwarlal Devjibhai
Chawl No."C", Room No.5, ..
10.Smt.Shardaben J. Patel
Chawl No."D", Room No.1, ..
11.Bhaichandbhai Dosabhai
Chawl "E", Room No.2 and 3, ..
all Indian Inhabitants,
residing at Dhanjiwadi,
Rani Sati Marg, Malad (East),
Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.112 OF 1996

Smt.Santokben J. Bharwad,
C.A. Navinchandra P.Bharwad,
Indian Inhabitant, residing at
Popat Jiva Building,
Dhanjiwadi, Rani Sati Marg,

Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and Competent Authority, Taluka Borivali, having his office at M.G.B.Building No.34, 1st Floor, Siddharth Road, S.V.Road, Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra Slum Areas (I.C. & R.) Tribunal having its office at Grih Nirman Bhavan, Bandra (East), Bombay 400 032. ..
3. State of Maharashtra Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group Co-op. Housing Ltd. having office at Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. ..
5. Nilamben R.Sheth, Room No.7 ..
6. Devjibhai C.Parmar Shop No.6, ..
7. Montu D'Souza Shop No.5, ..
8. Manjunath Narayan .. all Indian Inhabitants, residing at Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.113 OF 1996

Ahmad Dawood Saina Kumbhar Indian Inhabitant, residing at Dawood Saina Chawl, Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and Competent Authority, Taluka Borivali, having his office at M.G.B.Building No.34, 1st Floor, Siddharth Road, S.V.Road, Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra Slum Areas (I.C. & R.) Tribunal

having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra
Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Induben Shankar Chauhan
Room No.1, ..
6. Jayaben Dhirajbhai
Room No.3, ..
7. Shivram Bhachubhai
Room No.4, ..
all Indian Inhabitants,
residing at Dawood Saina Chawl,
Rani Sati Marg, Malad (East),
Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.114 OF 1996

Shri Mohanbhai Ramjibhai Mistry
of Indian Inhabitant, residing at
Kantawala Own Chawl,
Dhanjiwadi, Rani Sati Marg,
Malad (East),
Bombay 400 097. .. Appellant.
Versus
1. Deputy Collector (ENC) and
Competent Authority, Taluka
Borivali, having his office at
M.G.B.Building No.34, 1st Floor,
Siddharth Road, S.V.Road,
Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra
Slum Areas (I.C. & R.) Tribunal
having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Hasmukhlal Jamnadas Fofani
Chawl No.2, Room No.12,

6. Gokalbhai Arajanbhai Patel
Chawl No.2, Room No.2, ..
7. Mohanbhai Manbhai
Chawl No.__ Room No.7/14 ..
8. Mahendrakumar Natwarlal
Chawl No.2, Room No.9, ..
9. Kalubhai Raghavji Patel
Chawl No.2, Room No.19, ..
10.Amritlal Himatlal Bhatt
Chawl No.2, Room No.22, ..
11.Motilal Nandlal Soni
Chawl No.1, Room No.26, ..
12.Gaurishankar Mulshankar Bhatt
Chawl No.1, Room No.18, ..
13.Narenrdakumar D.Dave
Chawl No.3, Room No.12, ..
14.Kirtikumar Ratilal Shah
Chawl No.3, Room No.22, ..
all Indian Inhabitants,
residing at Dhanjiwadi,
Rani Sati Marg, Malad (East),
Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.115 OF 1996

Shri Mohanbhai Sukhabhai Patel
Indian Inhabitant, resident at
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Appellant.
Versus
1. Deputy Collector (ENC) and
Competent Authority, Taluka
Borivali, having his office at
M.G.B.Building No.34, 1st Floor,
Siddharth Road, S.V.Road,
Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra
Slum Areas (I.C. & R.) Tribunal
having its office at Grih Nirman
Bhavan, Bandra (East),
Bombay 400 032. ..
3. State of Maharashtra
Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group
Co-op. Housing Ltd. having
office at Dhanjiwadi, Rani
Sati Marg, Malad (East),
Bombay 400 097. ..
5. Pragjibhai Mohanlal Chudasma

Room No.2, ..
6. Gandhi Arvindbhai Ratilal
Room No.3, ..
7. Devraj Manji Kadia,
Room No.4, ..
8. Ravilal Ratanshi Shah
Room No.5, ..
9. Indrachandra K. Sharma
Room No.6, ..
10. Kantilal Chhaganlal Bhatt
Room No.7, ..
11. Champaklal K.Shah
Room No.15, ..
12. Ishwaribai T. Parmar
Room No.18, ..
13. Memon Nasibullas Sikander
Room No.19, ..
14. Smt.Damyantiben M.Joshi
Room No.20, ..
15. Indrachandra K.Sharma
Room No.23, ..
16. Mali Babulal Gallaji
Room No.24, ..
17. Amersibhai Mohanbhai
Room No.27 ..
18. Patel Jaswantbhai Chandubhai
Room No.27, ..
19. Sagar Zaverbhai Bhimjibhai
Room No.28, ..
20. Vimlaben Anantrai Doshi
Room No.33, ..
21. Pushpaben Gunvantrai Joshi
Room No.36, ..
22. Valabhai Donabhai Patel
Room No.38, ..
23. Raimalbhai J.Patel
Room No.39, ..
all Indian Inhabitants,
residing at M.S.Patel Chawl,
Swaminarayan Building,
Dhanjiwadi, Rani Sati Marg,
Malad (East), Bombay 400 097. .. Respondents.

ALONGWITH

LETTERS PATENT APPEAL NO.116 OF 1996

Khatijabhai Haji Abdul Karim
Indian Inhabitant, resident at
Telwala Chawl, 80/19,
Dhanjiwadi, Rani Sati Marg,

Malad (East), Bombay 400 097. .. Appellant.

Versus

1. Deputy Collector (ENC) and Competent Authority, Taluka Borivali, having his office at M.G.B.Building No.34, 1st Floor, Siddharth Road, S.V.Road, Goregaon (West), Bombay - 62. ..
2. The President, Maharashtra Slum Areas (I.C. & R.) Tribunal having its office at Grih Nirman Bhavan, Bandra (East), Bombay 400 032. ..
3. State of Maharashtra Mantralaya, Bombay 400 032. ..
4. Dhaniwadi Chawl Group Co-op. Housing Ltd. having office at Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. ..
5. Mahesh Jagmohan Khatri Room No.2, Telwala Chawl, ..
6. Kadermiya Huseinmiya Room No.3, Telwala Chawl ..
7. Dr.Dhirajlal K.Bahuwa Room No.6-7, Shop No.8, Telwala Chawl, ..
8. Joshi Iswarlal Keshavlal Room No.13, Telwala Chawl ..
9. Smt.Bhanumati Vershi Room No.14, Telwala Chawl ..
10. Velji Laxman Chawda Room No.20, Telwala Chawl ..
11. Nazir Babalal Kalal Room No.21, Telwala Chawl ..

all Indian Inhabitants, residing at Dhanjiwadi, Rani Sati Marg, Malad (East), Bombay 400 097. .. Respondents.

Mr.Anil C.Singh for the appellants.
Ms.Rajani Iyer i/b M/s.Shah and Sanghavi for respondent no.4.

CORAM : S.B.MHASE & D.B.BHOSALE, JJ.

DATE : APRIL 8, 2005.

ORAL JUDGMENT (PER D.B.BHOSALE, J.)

1. All the nine letters patent appeals involve common questions and, therefore, we propose to decide them by a common judgment. Though the appellants in all the appeals are different the facts are similar. The appeals are arising from common orders passed by the authorities below rejecting the applications filed by the appellants and some other similarly placed persons, under section 22 (1) (a) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'the Act'). Those orders have been affirmed by the impugned order passed by the learned Single Judge in the writ petitions filed by the appellants. The applications under section 22 (1) (a) of the Act were filed seeking permission to institute a suit for recovery of the arrears of rent and on that ground for eviction against the respondent-occupiers of the buildings/chawls in the slum area. The land and the buildings admittedly situate in the slum area declared under sub-section (1) of section 4 of the Act. The learned Single Judge dismissed all the writ petitions filed by the appellants by similar orders in limine. The order passed in the writ petitions and which is impugned

in the present appeals dated 26.2.1996 reads thus:

> "Heard the Learned Counsel for the Petitioner at length. Perused the impugned order of the Competent Authority and the Tribunal.
> A careful reading of the impugned orders it is obvious that both the authorities have arrwwed at a concurrent finding of fact which is based on material on record that the Petitioners are slumlords and are not entitled to recover rent in respect of the tenements in question.
> The order are well reasoned.
> I do not find any cogent reason to interfere with the impugned order of the Tribunal.
> Hence, this Writ Petition is dismissed".

2. F.E.Dinshaw Charities (for short 'the Trust') were the original owners of the land admeasuring 8 acres situate at Dhanjiwadi, village Malad, Mumbai bearing old survey nos.173, 174, 240 and 269 (new survey numbers being 284(part) and 290). The case set up by the appellants is that the 5 acres out of the aforesaid land was given on lease by the Trust to one Karsan Jivabai on 30.6.1954 (for short 'the said land'). Karsan Jivabai in turn created sub-lease in favour of various persons including the appellants in the said land between 1954 and 1960. The appellants claim that prior to 1962 they erected several buildings (chawls) in the said land and inducted hundreds of persons therein as their tenants. They

further claim that they provided all essential amenities and facilities to their tenants-occupiers and were collecting rent from them. According to the appellants, construction of the chawls in the said land and induction of several persons as their tenants was within the knowledge of Karsan Jivabai as also of the trust to which they never objected to. The appellants claim that they are the owners of the said chawls/buildings standing in the said land.

3. On September 30, 1977 a declaration under sub-section (1) of section 4 of the Act, thereby declaring the land bearing city survey nos.482 to 485 and its division nos.489 to 517 and its sub-division situate at Dhanjiwadi, Malad as slum area, was notified in the Official Gazette. The aforestated city survey numbers and the said land situate at Dhanjiwadi, Malad is one and the same. In 1985, the trust after inviting the tenders from prospective buyers offering the entire eight acres of land including the said land for sale on "as is where is" basis, executed a registered sale deed dated 30.7.1986, in favour of Dhanjiwadi Co-operative Housing Society (for short 'the society'), which is the respondent in all the

appeals. The said conveyance was executed after seeking permission of the Charity Commissioner under section 36(1)(a) of the Bombay Public Trust Act, 1950. The society purchased the entire 8 acres of land owned by the trust and since then it has become owner of the said land. The occupants of the land/chawls situate on the said land, are the members of the society. It is an admitted position that the society has undertaken the task of development of the slum. Forty percent of the said land has already been developed by the society. It has demolished the old, dilapidated chawls/buildings and constructed new buildings and have put the occupiers in possession thereof after seeking permission under section 8(1) of the Act. Other development is also in progress.

4. The aforementioned land has been subjected to several proceedings under the provisions of the Act, suits, writ petitions and special leave petitions since 1977, the year in which the notification declaring the entire 8 acres of land as slum under section 4(1) of the Act was issued by the Competent Authority. We deem it appropriate to make reference to all those proceedings, to understand and appreciate the arguments advanced by

the learned counsel appearing for the parties and in particular the submission of the learned counsel for the society that the appellants and other similarly placed persons did not keep a single stone unturned to stall the development of the said land by filing different proceedings personally and/or through handful occupiers.

5. The different proceedings initiated, contested and pending till this date can be divided into three groups:

(A) It started with the two appeals filed at different point of time, one by the trust and other by the appellants, challenging the notification under section 4(1) of the Act. The trust had filed four appeals bearing nos.1023, 1024, 1025 and 1026 of 1977 challenging the four different notifications issued under section 4(1) of the Act which were dismissed by the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, Mumbai (for short 'the Tribunal') by its judgment and order dated 29.9.1980. The Trust did not carry the matter further. In so far as the appeals filed by the appellants and few other similarly placed persons are concerned, they were

dismissed by the tribunal by the judgment and order dated 4.2.1991. That judgment was challenged by the appellants as also by some other persons in writ petitions. Writ Petition bearing No.2871 of 1991 filed by the appellant came to be dismissed on 12.7.2002 whereas other writ petitions came to be dismissed on 24.10.1992.

(B) The second group of the proceedings arise out of the orders of eviction and demolition passed under sections 33 and 38 of the Act, against which several appeals and suits were filed by different persons. (a) The first such suit, was filed by one of the occupiers bearing B.C.C.C.Suit No.1146 of 1988 against the action of demolition. The application seeking interim stay of demolition filed in the said suit was, however, rejected by the Judge of the City Civil Court on 19.4.1988. The matter was not carried further. (b) One more occupier filed appeal No.73 of 2000 against the order of demolition and eviction under sections 33 and 38. The appeal, however, came to be rejected by the Commissioner of Konkan Division, Mumbai (for short ‘the Commissioner’) by his judgment and order dated 29.11.2000. That order was carried in writ petition no.2828 of 2002 which also was dismissed

on 20.12.2001. The letters patent appeal filed against that order bearing No.12 of 2002 has been admitted by this Court. However, notice of motion taken out therein for interim relief came to be dismissed on 30.1.2004. That order has been affirmed by the Apex Court in S.L.P.No.4445 of 2004 on 15.3.2004. (c) One Babulal R.Patel and others also had filed a suit No.3789 of 1994 against the order of demolition in which interim relief was refused by the order dated 5.7.1994. That order was carried in Appeal from Order No.825 of 1994 in this Court. The A.O. was ultimately allowed to be withdrawn by this Court (Variava, J.) on 17.7.1994. (d) One Trimbak D.Mistry, the appellant in L.P.A. No.111 of 1996, also had filed suit No.599 of 1996 in this Court against the society and others seeking stay to demolition. In that suit a Notice of Motion No.516 of 1996 was taken out for interim order in which ad-interim relief was refused by this Court vide order dated 23.2.1996. That order was carried in appeal No.309 of 1996 which was allowed to be withdrawn by the division bench presided over by Hon’ble the Chief Justice on 25.3.1996. Ultimately, notice of motion no.516 of 1996 was also allowed to be withdrawn on 26.11.1998. (e) The ten writ petitions had also

been filed by some of the occupants of the structures including Shiromani Vijay Bahadur Singh and Trimbak Dhondu Mistry, the appellants in L.P.A. No.109 of 1996 and 111 of 1996 respectively, to save the structures from demolition. All the ten writ petitions, however, came to be dismissed by this Court on 26.2.1996. (f) One more order of eviction and demolition was passed on 3.10.2000 against which appeal No.73 of 2000 filed by one of the occupiers also came to be rejected by the Commissioner on 29.11.2000. (g) Yet another order passed under sections 33 and 38 dated 20.4.1995 against Taraben Doshi and Arvind Rathod was carried in appeal before the Commissioner. However, the appeal was dismissed on 28.6.1995 against which writ petition No.3131 of 1995 was filed in this Court. The writ petition also came to be dismissed on 21.7.1995. The two L.P.A.Nos.96 of 1995 and 97 of 1995 filed against the order dated 21.7.1995 were dismissed by the division bench presided over by Hon’ble Mr.Justice A.V.Sawant vide order dated 2.8.1995. (h) Similarly, the order of demolition dated 2.11.1995 passed against Prakash Makwana, Baldevbhai Patel, Madhuben Shah and others was challenged in appeal by Makwana before the Commissioner who dismissed that appeal on

16.12.1995. Writ Petition No.2151 of 1995 filed against that order also came to be dismissed by the division bench presided over by the Chief Justice on 15.1.1996. The special leave petition filed against that order in the Supreme Court bearing No.2422 of 1996 also came to be disposed of vide order dated 19.2.1996 in which three weeks time to vacate the tenements was granted to the petitioners. Civil appeal No.3637 of 1996 arising from S.L.P.No.2422 of 1996 ultimately came to be dismissed by the Apex Court on 22.9.1996. (i) There was yet another writ petition bearing No.187 of 1997 filed by Kalyanji Dedhia and others to stall the development. The writ petition was dismissed by the division bench presided over by Hon'ble the Chief Justice on 3.3.1997. The S.L.P. filed in the Apex Court against that order bearing No.6461 of 1997 also came to be rejected on 1.9.1997. (j) Further an attempt was also made to stall the development in the said land by filing a dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960. In the dispute, stay to redevelopment in terms of the agreement dated 17.9.1993 was sought by 36 disputants. The application seeking injunction filed in the said dispute was rejected by the Co-operative Court by

order dated 9.1.1996. That order was carried in appeal which was rejected by the Co-operative Appellate Court on 30.4.1996. The writ petition filed against that order bearing No.2881 of 1996 was rejected by the learned Single Judge of this Court (Kapadia, J.) on 6.6.1996. The S.L.P. against that order filed in the Supreme Court bearing No.14385 of 1996 also came to be dismissed on 12.8.1996.

(C) After having lost in all the proceedings mentioned above the appellants and other similarly placed persons filed applications under section 22 (1) (a) of the Act interalia seeking permission to institute a suit for eviction and for recovery of arrears of rent against the occupiers before the competent authority. The competent authority after recording extensive reasons dismissed all the applications filed by the appellants and others vide order dated 9.5.1994. That order was affirmed by the tribunal in the appeals filed under section 23 of the Act vide common order dated 2.2.1995 which was impugned in the writ petitions filed by the appellants. All the writ petitions were dismissed by the learned Single Judge vide aforequoted order dated 26.2.1996.

6. At this stage it would be useful to make a specific reference to one of the orders passed by this Court. The Writ Petition No.187 of 1997 filed by Kalyanjibhai V.Dedhia and Others was heard and disposed of by the Division Bench presided over by Hon'ble the Chief Justice M.B.Shah (as he then was). The Division Bench took the survey of several proceedings, filed and then pending, concerning the land of the Trust and in paragraph 5 of the order dated 3.3.1997 observed thus:

> "5. Considering the aforesaid facts, in our view, this is an instance of abuse of process of law by filing repeated writ petitions for the same cause. Admittedly for the slum area the Co-operative Society was formed by the occupants of the premises. The Co-operative Society thereafter applied under Section 8(1) of the Slum Clearance and Redevelopment Act for erection of the new building by demolishing the existing slums. Permission was granted to the society and thereafter redevelopment agreement was executed with Respondent No.6 on terms and conditions mentioned therein, said terms are in accordance with the existing guidelines framed by the State Government which, inter alia, provide that the occupants of the slum area would be area equivalent to 1.46 F.S.I. while the Developer would get remaining area of 1.04 F.S.I. for his disposal.

7. It is against this backdrop we heard learned counsel for the parties at great length and

perused the voluminous record placed before us. We have carefully gone through the impugned orders and various other orders passed in the aforementioned proceedings from time to time as also other documents relied upon by the parties. Mr.Anil C.Singh, learned counsel for the appellants, at the outset, submitted that the appellants are the owners of the structures and sub-lessees in respect of the land appurtenant thereto. The structures erected by them are tolerated structures and they were erected with the knowledge of the trust and Karsan Jivabai. Though the said land was leased out to Karsan Jivabai on condition that it would be used for agricultural purpose, the use for non-agricultural purpose made by the appellants between 1954 and 1960 was never objected to either by the trust or by Karsan Jivabai. In view thereof, according to Mr.Singh, by no stretch of imagination the appellants could be termed as slumlords. In other words, the appellants cannot be said to have had taken possession of the said land illegally which is a basic requirement to brand a person as ‘slumlord’. He further submitted that the scope of the application under section 22 of the Act is narrow whereby the competent authority while granting or refusing permission

sought for instituting a suit for recovery of the rent and/or eviction is expected to consider only the factors contained in clause (a), (b), (b-1) and (c) of sub-section 4 of section 22 of the Act. According to Mr.Singh, the competent authority while dealing with the application under section 22(1) of the Act cannot go into and/or decide whether or not a person seeking such permission is a slumlord and/or to investigate the title or the legal rights of such person to the property. In other words the competent authority has no power to decide whether a person seeking permission has taken possession of the land in slum area illegally and decide that possession of the land and/or structures constructed thereon are unauthorised. That, according to Mr.Singh, is within the domain of civil court of competent jurisdiction. According to Mr.Singh, the finding recorded by the competent authority while dealing with the application under section 22 of the Act that the appellants are slumlord is, therefore, without jurisdiction and liable to be set aside. He next contented that a definition of ‘slumlord’ has been inserted in the Act in 1986 for first time by the Maharashtra Act 30 of 1986 and, therefore, the same cannot be given retrospective effect. Mr.Singh

also took us through the provisions of Transfer of Property Act and urged that in any case the possession of the appellants cannot be termed as unauthorised and/or they cannot be said to have had taken possession of the said land illegally. In support of this contentions he placed reliance upon the judgments of the Delhi High Court in **Mohanlal Ahuja V. Ramjas Foundation and Anr. AIR 1972 DELHI 148, Smt.Raj Rani V. Dwarkar Dass and Ors. AIR 1972 DELHI 208 and Bhur Singh V. G.C.Jain and Anr. AIR 1984 DELHI 5**.

8. On the other hand Ms.Rajini Iyer, learned counsel for the respondent-society submitted that granting of permission under section 22 of the Act is not an empty formality and considering the object of the Act the competent authority would be obliged to refuse permission to institute a suit if it is satisfied that no alternative accomodation would be available to the occupier if he were evicted and/or the eviction is not in the interest of improvement and clearance of the slum area. It was next contended that while dealing with an application under section 22 the competent authority can refuse such permission to the slumlord and, therefore, if the occupier opposes

the application on that ground the competent authority has power to determine whether or not a person, who has applied under section 22, is a slumlord. In so far as definition of slumlord is concerned Ms.Iyer submitted that the appellants squarely fall within that definition and, therefore, the authorities below have rightly refused to grant permission under section 22 of the Act. It was next urged on behalf of the respondent-society that no occupier who is entitled to the benefits arising from declaration of an area as a slum area be denied such benefits by allowing a person, especially a landlord or slumlord, by being evicted from the premises within the slum area on the grounds of non payment of arrears of rent. The competent authority is also empowered to make enquiry in respect of the factors mentioned in sub-section 4 of section 22 of the Act. In so far as the submission of the appellants that the provisions of section 2 (h-a), the definition of slumlord, has a prospective effect is concerned Ms.Iyer submitted that the said provision applies retrospectively. In support of her contention she placed reliance upon the judgment in **Jethmal Jagannathji Dhangra V. Parmeshwar Sheotabal Teli 1988(3) Bombay Cases Reporter 435**. Reliance was

also placed on the following judgment: **Taj Mohammed Yakub V. Abdul Gani Bhikan AIR 1991 BOMBAY 236; Punnu Ram and Others V. Chiranji Lal Gupta & Others AIR 1991 Supreme Court 1094; and Kalawatibai Lokumal Sindhi V. Gopala Ganpati Bhanarkar, 1984 Mh.L.J. 261.**

9. Keeping in view the submissions advanced by the learned counsel appearing for the parties, in our opinion, the following questions arise for determination in this group of letters patent appeals: (i) The competent authority while dealing with the application filed under section 22 of the Act, seeking permission to institute a suit for obtaining any decree or order for eviction or for recovery of any arrears of the rent or compensation against a society and/or occupier/s of any building/s in the slum area, whether or not can enter into a question that a person seeking such permission is a ‘slumlord’ as defined under section (2) (h-a) of the Act; and (ii) In the facts of the present case and in the face of the material produced on record, whether the competent authority, while dealing with the application filed by the appellants under section 22 of the Act, was right and/or justified in holding that the

appellants are ‘slumlords’ and whether such finding is sustainable in law.

10. The intention of the Legislature as formulated in the preamble says amongst others that to make better provision for the improvement and clearance of slum areas in the State and their redevelopment and for the protection of the occupiers from eviction and distress warrants. The Legislature besides other aspects, rendered protection to the occupiers against exploitation and has also curbed evil tactics of the slumlords. The Act has provided the protection against the recovery of arrears of rent from the occupiers through process of distress warrants and/or they being dispossessed by slumlords. Before we consider the questions involved in these appeals it would be advantageous to understand the scheme of the Act. It contemplates improvement, clearance and re-development of slum and while doing so complete protection of occupiers in such areas from eviction. The Chapter I provides the definitions of the words and expressions used in the Act, apart from an appointment of the competent authority. The definition of the words or expressions which may be relevant and useful for determining the

questions raised in these appeals, are clause (e), (f), (ga) and (h-a) of section 2 which define ‘occupier’, ‘owner’, ‘slum area’ and ‘slumlord’ respectively. All these definitions read thus:

> "2(e). ‘occupier’ includes --
>
> (i) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;
>
> (ii) an owner in occupation of, or otherwise using, his land or building;
>
> (iii) a rent-free tenant of any land or building;
>
> (iv) a licensee in occupation of any land or building; and
>
> (v) any person who is liable to pay to the owner damages for use and occupation of any land or building;
>
> "2(f). ‘Owner’ when used with reference to any building or land, means the person who receives or who is entitled to receive the rent of the building or land, if the building or land were let, and includes,
>
> (i) an agent or trustee who receives such rent on account of the owner;
>
> (ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any building or land devoted to religious or charitable purpose;
>
> (iii) a receiver, sequestrator or manager appointed by a court of competent jurisdiction to have the charge of or to exercise the rights of owner of the said building or land; and

(iv) a mortgagee-in-possession;
(but does not include, a slumlord;)

"2 (ga) "Slum areas" means any area declared as such by the Competent Authority under sub-section (1) of section 4 (and includes any area deemed to be a slum area under section 4A)");

"2 (h-a) "Slumlord" means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and licence agreements or any other agreements in respect of such lands, or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any persons on rental or leave and licence basis for construction, or use and occupation, of unauthorised structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorised structure thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who abets in any manner the doing of any of the above-mentioned things".

10.1 Chapter I-A deals with Slum Rehabilitation Scheme. Section 4 in Chapter II empowers the competent authority, on being satisfied about the conditions mentioned in sub-section (1), to declare any area to be a slum area. The provisions of sub-section 2 of section 4 speak about the factors to be taken into consideration while determining as to which buildings can be termed as unfit for human

habitation whereas sub-sections 3, 4, 5 and 6 provide an appeal to be filed by any person aggrieved by a declaration made under sub-section (1) of section 4 to challenge such declaration in appeal. It also provides as to what procedure and precaution the Tribunal should follow and/or take while deciding the appeal. Chapter III of the Act deals with slum improvement and provides for the procedure for carrying out improvement/development works in any slum area, after the area is declared to be a slum in accordance with provisions of Chapter II. It further provides for the powers of competent authority of execution of works of improvement, requiring occupiers to vacate the premises, improvement of the building which are unfit for human habitation and all areas which are source of danger to public health etc. The chapter also provides for an enforcement of notice requiring execution of works of improvement, expenses of such work, the power of the competent authority to order demolition of buildings unfit for human habitation and the procedure to be followed for such demolition etc. Chapter IV of the Act deals with slum clearance and redevelopment. Chapter V empowers the State to acquire land and the procedure to be followed for

acquisition including determination of compensation, apportionment of compensation and its payment. Chapter VI deals with the protection of the occupiers in slum area from their eviction and distress warrants. Section 22 in this chapter provides for the previous permission in writing by a person who desires to initiate proceedings for eviction of occupiers or for issue of distress warrants. It would be advantageous to reproduce section 22, which read thus:

> "22. Proceedings for eviction of occupiers or for issue of distress warrants not to be taken without permission of competent Authority- (1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority-
>
> (a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of any occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or
>
> (b) when any decree or order is obtained in any suit or proceeding instituted before such commencement for the; eviction of an occupier from any building or land in such area or for recovery of any arrears of rent of compensation from such occupier, or for both execute such decree or order; or
>
> (c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII

of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV-A of the Provincial Small Causes Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any occupier of a house or premises in a slum area.

{(1A) Notwithstanding anything contained in sub-section (1) as in force before the commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Second Amendment) Act, 1986 (hereinafter in this section referred to as "the Amendment Act") or in any other law for the time being in force, no person shall, except with the previous permission in writing of the Competent Authority,-

(a) execute any decree or order obtained in any suit or proceeding instituted during the period commencing from the 30th day of September 1985 being the date of the expiry of the Maharashtra Vacant Lands (Further Interim Protection to Occupiers from eviction and Recovery of Arrears of Rent Act, 1980) and the date of commencement of the amendment Act, for eviction of an occupier from any building or land in a slum area (which area was earlier purported to be covered by the definition of "Vacant land" in clause (f) of section (2) of the Maharashtra Vacant Lands (Prohibition of Unauthorised occupation and Summary Eviction Act, 1975) or for recovery of any arrears of rent or compensation from such occupier, or for both; or

(b) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV A of the Provincial small Cause courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any such occupier of a house or

premises in any such slum area}".

(2) Every person desiring to obtain the permission referred to in sub-section (1) (or (1-A) shall make an application in writing to the Competent Authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the Competent Authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall, by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission (under clause (a) or (b) of sub-section (1) (or clause (a) of sub-section (1-A) the Competent Authority shall take into account the following factors, namely:-

(a) whether alternative accomodation within the means of the occupier would be available to him, if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(b-1) whether, having regard to the relevant circumstances of each case, the total amount of arrears of rent or compensation and the period for which it is due and the capacity of the occupier to pay the same, the occupier is ready and willing to pay the whole of the amount of arrears of rent or compensation by reasonable instalments within a stipulated time;

(c) any other factors, if any, as may be prescribed".

10.2. The rest of the provisions in chapter VI provide for appeal, recovery of the rent by criminal intimidation, restoration of possession of

premises vacated by tenant, rent of building in slum area etc. Sections 33 in Chapter VII of the Act empowers the competent authority to evict the occupants from the building whereas section 38 empowers the competent authority to pass order of demolition of buildings in certain areas. Section 41 provides complete protection to the Competent Authority or any person acting under its authority from being prosecuted or suited, for anything done in good faith or intended to be done under this act or the rules made thereunder. Section 42 provides that no Civil Court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act to determine in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Thus, it is clear that the scheme of the Act provides a complete machinary for the improvement and clearance of slum areas in the State and for their redevelopment and complete protection to the occupiers from eviction and distress warrants and for matters connected therewith.

10.3. A close look at the word ‘owner’ as defined in clause (f) of section 2, shows that when it is

used with reference to any building or land, means the person who receives or is entitled to receive the rent of the building or land, if were let, and it includes, an agent or trustee who receives such rent on account of the owner. It also includes a receiver, sequestrator or manager appointed by a court of competent jurisdiction to have the charge of or to exercise the rights of owner of the said building or land, and a mortgagee-in-possession. It also includes an agent or trustee, who acts for and on behalf of or on account of the owner of the land or building. However, it specifically excludes a ‘slumlord’. Definition of the term "owner", thus, clearly indicates that a person who assumes legal title or his agent and/or trustee only is included. In other words a person who does not receive a rent of a building or land, if it were let, on account of the owner or who is not entrusted with, or concerned for, any building or land devoted to religious or charitable purpose, or who is not appointed by the Court of competent jurisdiction or who is not mortgagee-in-possession, is not included in the definition of ‘owner’. This is further clear from the definition of ‘occupier’ which states that any person who for the time being is paying or is liable to pay to the ‘owner’, the

rent of the land or building in respect of which such rent is paid or is payable. It further provides that any person who is liable to pay to the 'owner' damages for the use and occupation of any land or building. A conjoint reading of expression 'owner' used in the definition of 'occupier' and the definition of 'owner' would, in our opinion, mean only the person having legal title to the property in slum area or his authorised agent or trustee. The person who is not having a legal title, who is not an agent or trustee and whose possession in slum area is unauthorised or illegal is not entitled to enjoy the powers and rights of lawful 'owner'.

10.4. The definition of 'Slumlord' was inserted by Maharashtra Act 30 of 1986 which was brought into force on 23rd July, 1986. By that amendment the Legislature also though it necessary to amend the definition of the term 'owner' in section 2(f) by excluding a slumlord from the definition of 'owner'. The intention of the Legislature as reflected in the statement of objects and reasons for introducing the definition of the expression 'Slumlord' is clear. The Legislature found that the expression 'owner' as defined in section 2(f)

of the Act was too wide to include a ‘Slumlord’ who receive or entitle to receive the rent of the building or land in slum area. It was observed that the slumlords have encroached upon the land belonging to the Government or local authority or any other person and have constructed unauthorised structures thereon which have resulted into slum areas and are collecting or attempting to collect from the occupiers in such slum areas the rent, compensation or other charges or are evicting or attempting to evict such occupiers by criminal intimidation or by force. The Legislature, therefore, found it expedient to amend the expression ‘owner’ so as to exclude therefrom ‘slumlord’ and also to define expression ‘slumlord’. Thus, it is clear that the Legislature never desired to include any other person much less a slumlord in the definition of ‘owner’ or the person whose possession of the land or building is illegal/unauthorised.

10.5 A plain reading of the definition of ‘slumdlord’ would show that it consists of six categories of the persons, who could be described as slumlord. They are as follows: a person (1) who illegally takes possession of any lands,

whether belonging to Government, local authority or any other person, or enters into or creates illegal tenancies or leave an licence agreements or any other agreements in respect of such lands, or (2) who constructs unauthorised structures thereon for sale or hire, or gives such lands to any persons on rental or leave and licence basis for construction, or use and occupation, of unauthorised structures, or (3) who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or (4) who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or (5) who evicts or attempts to evict such occupiers by force without resorting to the lawful procedure, or (6) who abets in any manner the doing of any of the abovementioned things. Where an act of a person taking possession of any land or building in slum area is illegal and if such person commit further acts as mentioned in the aforesaid categories, he will be covered by the definition of ‘slumlord’. In other words the acts, as mentioned in all the six categories, committed by any person in respect of such land or building, will include him where an act of taking possession

itself is illegal or possession of such land or building is illegal. The first and third categories in the definition use a phrasology "illegally takes possession" and "taking illegal possession" of such land which clearly indicate an intention of the Legislature. It means, even where an act of taking possession is not illegal but possession of such land and building is illegal or the person being in possession has no legal title or authority to remain in possession thereof on behalf of the owner, such person also will be covered by the definition of slumlord. If the expression "who illegaly takes possession" as occur in the definition is not read to include a person who gets into and/or remain/continue in possession which in law is illegal, the very object of the Act would be frustrated and in that case such person who has no title or authority to remain/continue in possession will get out of the cluthes of the Act by simply claiming that he has not taken possession illegally. Therefore, it is clear that a person whose possession of the land/building in slum area is illegal will be covered by the definition of a word "slumlord". In short a person who illegally takes possession or who is inducted in the land/building in the slum area illegally and/or

whose induction is not legal qua the owner or where possession is illegal and unauthorised and if such person commits the acts mentioned in the definition of a 'slumlord', he shall fall in that category. Therefore, the submission that where an act of taking possession of the land or building in slum area from a lessee as sub-lessee is not illegal, though behind the back of the 'owner', such person cannot be declared as a 'slumlord' must be rejected.

11. It may be noted that prior to 1987 the proceedings included in section 22(1) of the Act were limited to the proceeding sought to be instituted for eviction of occupiers from the premises in slum areas. However, by an amendment of 1987 being Maharashtra Act II of 1987 the Legislature after taking note that the proceeings for recovery of rent and/or arrears of rent from occupiers of premises in the slum areas normally resulted in eviction orders passed in such suits, also found it necessary to include by way of an amendment the proceedings initiated for the recovery of rent within the scope of section 22 of the Act. It may be further noted that section 22(1) as amended, as aforestated, was with the

provisions of section 22(4)(b-1) alongwith section 23-A was introduced in 1987. The reading of these provisions also will show that intendment of the Legislature was to ensure that no occupiers, who are otherwise entitle to the benefits arising from declaration of an area as slum, are denied such benefits by a person irrespective of the fact whether he is a landlord or slumlord, by being evicted from the premises within the slum area on the grounds of non payment of arrears of rent. This was done by the Legislature having found that many a slumlords have encroached upon the land belonging to Government or local authority or any other person and have constructed unauthorised structures thereon which have resulted in slum area and are collecting or attempting to collect from the occupiers in the slum areas rent, compensation or other charges without resorting to lawful procedure and thus harass such occupiers.

12. The scheme of section 22 provides that previous permision in writing of the competent authority is necessary for institution of a suit and even for execution of a decree obtained on the date of commencement of the Act or seeking distress warrants for the arrears of rent against any

occupier of the house or premises in the slum area. It provides protection against recovery of arrears of rent from the occupier through the process of distress warrants. Sub-section 4 provides for the factors as mentinoed in clauses (a), (b), (b-1) and (c) which Competent Authority is expected to take into account while granting or refusing to grant permission under section 22(1). The wordings of sub-section (4) would show that granting of permission is not an empty formality. The competent authority would be obliged to refuse permission if it is satisfied that the factors mentioned in clauses (a) or (b) or (b-1) or (c) are not satisfied. From the perusal of sub-section 4, the intendment of the Legislature is clear that if a free hand is given to seek recovery of arrears and to evict the occupier it would render the attempt meaningless being made for benefiting such occupiers by a person having a vested interest in doing so. The intendment of the Legislature in enacting section 22 of the Act is vis-a-vis not permitting unfettered rights to adopt proceedings for eviction and/or collecting arrears of rent from the premises in slum area was refortified and reiterated by it in 1987 amendments by introducing the words "or for recovery of any arrears of rent

or compensation from any such occupier or for both" in section 22(1)(a) and insertion of section 23-A. Therefore, in our opinion, an application under section 22(1) can be resisted by the occupiers interalia on the aforesaid grounds if available to them at site.

13. The Apex Court in **Punnu Ram's** case (supra) had an occasion to deal with the submission as to whether factors laid down in section 19(4) of the Slum Areas (Improvement and Clearance) Act, 1956 (for short "Act of 1956") are to be read as cumulatively or alternatively and to examine whether the findings of the High Court that in a given case the 'tenant' may not be provided with alternative accomodation. The Apex Court while considering the aforesaid submissions dealt with section 19(4) of the Act of 1956 which is para-materia with section 22 (4) of the Act. The only difference between the said two provisions is that there is an additional factor namely clause (b-1) in sub-section 4 of section 22 which requires to be taken into account while granting or refusing to grant the permission. And in so far as the wording of clause (a) is concerned, the Legislature has used a word "occupier" instead of the word

'tenant' as used in clause (a) of sub-section (4) of section 19 of the Act of 1956, with an intention to give complete protection to 'occupiers' including 'tenants' in slum area. It is clear from sub-section 4 that all the three factors as also such other factors, if any, as may be prescribed, are required to be taken into consideration before granting or refusing to grant the permission as contemplated by sub-section 4. A bare look at section 22 would, thus, show that permission to file a suit for eviction of an occupier from any building or land in the slum area or to permit execution of such decree or order obtained prior to coming into force of the Act, even if a single factor out of the clauses (a) to (c) is satisfied, then there is no reason to withhold the permission under sub-section (4) of section 22. And in such a case, there could not be any justifiable reason for the competent authority to refuse to grant permission as sought by any person. The Apex Court in **Punnu Ram's** case (supra) relying upon the observations in **Jyoti Pershad V. Administrator for the Union Territory of Delhi AIR 1961 SC 1602** has observed that the policy of the enactment suggests that slum dwellers shall not be evicted unless alternative accomocation could be obtained for him

and that if the buildings or the entire area are to be ordered to be demolished, in that event, the dwellers would, of course, have to vacate, but it was presumed that alternative accomodation would necessarily have to be provided before any such order is made. It is thus clear that eviction process and improvement or reconstruction process is required to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled. The Apex Court has also made reference to section 20-A of the Act of 1956 which is para-materia with section 24 of the Act and observed that if the building is required by the owner for demolition or reconstruction or improvement, then section 20-A takes care of the tenants. It has further observed that if the tenants desire to be replaced in the occupation of the building after completion of the work of improvement or re-erection of the building, then he is required to file an application before the competent authority. In other words if the tenant is evicted on the ground of improvement or demolition of the building in the slum area, then tenant is required to be provided accomodation in the improved or reconstructed building. The observations made by the apex court in concluding paragraph 8 of Punnu Ram’s case would be useful,

which reads thus:

> "8. Hence even if these two factors mentioned in clauses (a) and (b) of sub-section (4) are to be taken into account as alternative factors by the competent authority before granting permission to file a suit for eviction or to grant permission for execution of a decree against a tenant residing in a slum area, the tenant's rights are not in any manner prejudicially affected. He is fully protected by the scheme of the Act. Hence, the finding given by the High Court that in a given case, the tenant may not be provided with alternative accommodation is not only against the decision rendered by this Court in the case of Jyoti Pershad (AIR 1961 SC 1602), but also against the scheme of the Act. However, the High Court was right in holding that the factors which are mentioned in clauses (a) and (b) of sub-section (4) of Section 19 are to be taken into account as alternative factors".

13.1 Section 22, empowers the competent authority to entertain and consider a request of a person seeking permission to institute a suit for recovery of arrears of rent or for eviction or to execute any decree in any suit instituted before commencement of the Act and while doing so it is obliged to take the factors, as mentioned in sub-section 4, into account before granting or refusing to grant the permission sought under clause (a) or (b) of sub-section (1) or clause (a) of sub-section (1-A) of section 22. Thus, keeping the scheme of the Act and in particular section 22 as also sections 41 and 42 in view and considering

the definitions of the words ‘occupier’, ‘owner’ and ‘slumlord’, it is clear that while dealing with an application under section 22 (1)(a) of the Act the competent authority is competent enough to enter into and decide whether or not a person seeking permission is a ‘slumlord’. If the contention urged on behalf of the appellants that the competent authority had no jurisdiction to decide that the appellants are ‘slumlords’, while dealing with their application under section 22 of the Act, is accepted the very object of the act would be defeated. The sole object of the Act is to make better provision for improvement and clearance of slum areas and their redevelopment and to achieve this object the Act gives free hand to the competent authority. The competent authority or any person acting under its authority is also given protection under section 41 of the Act against any action taken in good faith.

14. In so far as the present case is concerned, after the declaration under section 4 of the Act and after formation of the society, the development of the property has begun and admittedly 40% of the property has already been developed. The rest of the development is also in progress. Keeping that in view and considering the judgment of the Apex

Court in **Punnu Ram's** case, in our opinion, the permission was rightly rejected by the competent authority. At this stage we would also like to make a reference to the applications filed by the appellants seeking permission under section 22(1). The application format is prescribed under section 22(2) which provdies that a person seeking permission should give reasons for seeking eviction of the occupier. The appellants had given the following reasons: (1) He is in arrears of rent from 40.76; (2) He is not being using the premises for the purpose for which it was let out for a continuous period of more than six months; (3) Made additions and alterations of permanent nature without any permission; (4) Trying to part with the possession of the premises by accepting illegal payment. Except the aforesaid reasons no other ground in their application was incorporated for seeking eviction. The Competent Authority, however, while granting permission irrespective of the grounds mentioned in the application seeking permission under section 22(1) is obliged to take into account the factors mentioned in sub-section 4 of section 22 of the Act. It may be noticed that a copy of the proposed plaint annexed to the application under section 22, filed by the

appellants, shows that they sought permission to file a suit only on the ground of arrears of rent and not on any other grounds, much less the grounds mentioned in the application under section 22. Against the backdrop of these facts the submission of Mr.Singh, learned counsel for the appellants that the Competent Authority ought to have granted permission to the appellants as prayed by them under section 22(1) must be rejected. Moreover, it may be noticed that the case of the appellants was not that they either offerred alternative accomodation to the occupiers or alternative accomodation within the means of the occupier would be available if they were evicted; and that the eviction is in the interest of improvement and clearance of the slum area. In so far as clause (b-1) in sub-section 4 is concerned, the competent authority was also expected to take into account the total amount of arrears of rent or compensation and the period for which it is due and the capacity of the occupiers to pay the same and whether the occupier is ready and willing to pay the whole of the amount of arrears of rent or compensation by reasonable instalment within stipulated time, having regard to the relevant circumstances of each case. However, in the present case the Competent

Authority has not undertaken the task as contemplated in clause (b-1) of sub-section 4 of section 22 of the Act since it reached the conclusion that a person seeking permission under section 22 has no right to recover the arrears of rent he being a slumlord. Therefore, the question of granting permission to institute a suit for eviction only on the ground of arrears of rent does not arise. The Act being a part of the beneficial and welfare legislation enacted from time to time to ensure to the persons in slum areas a chance of decent shelter and life free of demands of the local Slumlords and neglectful landlords, the appellants, even if it is assumed are not slumlords, cannot be given permission to institute a suit for recovery of rent and for eviction on that ground. Therefore, looking at the case from any angle, the order rejecting the applications under section 22 cannot be faulted.

15. That takes us to consider the next submission of the learned counsel for the appellants that the definition of ‘slumlord’ and exclusion of slumlord from the definition of ‘owner’ was brought into force in 1986 and, therefore, would not apply to the facts of the

present case. In other words, the amending provisions in the Maharashtra Act 30 of 1986 have only prospective operation and cannot affect the proceedings which were pending at the relevant time. As discussed earlier the scheme of the Act and section 22 in particular has made it explicit to provide complete protection to the occupiers of the slum areas. The intendment is not to allow the occupier to suffer the high handedness of the Slum Lords. If the amendment is held to be prospective, it would impair the policy of the Legislature. In our opinion it cannot be construed that the amending provisions have only prospective operation and cannot affect the proceedings which were pending on the date when the said amendment was brought into force. As a matter of fact by introducing the definition of Slum Lord the Legislature has further made it explicit to provide complete protection to the occupiers from the sufferance of high handedness of the slumlords. Even if the definition of ‘slumlord’ and amendment of the definition of ‘owner’ are overlooked still in our opinion a person such as the appellants were not covered by the definition of ‘owner’, entitling them to evict the occupiers. A bare reading of the definition of ‘owner’, as it stood before the said

amendment, makes that clear. It cannot be said that by introducing the definition of a slumlord the Legislature affected the substantive rights of the persons like the appellants. It simply confirms that a person who is not covered by the definition of ‘owner’ cannot claim any right, title or interest in any building or land in slum areas.

16. That takes us to consider the submission of the learned counsel for the appellants that the competent authority while dealing with appellants’ application under section 22 of the Act has wrongly branded them as slumlords. With the assistance of the learned counsel appearing for the parties we perused voluminous record including the tender issued by the trust for disposing of their land, inviting offers from prospective buyers, the so called agreement of lease dated 30.6.1954 between the trust and Karsan Jivabai, the map and one of the agreements between Karsan Jivabai and appellants i.e. with Trimbak Dhondu Mistry. The authorities below after evaluating the material placed before them have concurrently held that the appellants are slumlords. That finding was affirmed by this Court in the writ petitions From the perusal of the impugned orders as also from the

documents relied upon by the parties it is clear that Karsan Jivabai was given the said land by the trust for agricultural use. The documents further show that Karsan Jivabai had encroached upon the adjoining land of the trust admeasuring about 3.38 acres for which the trust had to file civil suit in this Court against Karsan Jivabai and others bearing Suit No.439 of 1964 and that suit was decreed against them. Keeping that in view we re-examined the entire material placed before us. A nomenclature of the document dated 30.6.1954, which, according to the appellants, was 'lease agreement' between the trust and Karsan Jivabai was 'Ground Rent Agreement'. There was a categoric condition in the said agreement that Karsan Jivabai would not construct on the land for the purpose of rent and he would use the said land for cultivation and gardening. Similarly, the document executed between Karsan Jivabai and one of the appellants i.e. Trimbak Dhondu Mistry dated 6.10.1960 was titled as agreement of lease. In that agreement Karsan Jivabai was described as a tenant who granted lease in favour of Trimbak Mistry for residential, industrial and business purpose. Both these agreements were not sufficiently stamped and were also not registered. The agreement dated

6.10.1960, was executed in contravention of the terms of the agreement dated 30.6.1954 between Karsan Jivabhai and the trust. Moreover in the suit bearing No.1146 of 1998 these documents were impounded. It is clear from the terms of this agreement that Karsan Jivabai was not authorised to sub-lease or create third party rights in the property. The appellants after getting into possession of the land have constructed several unauthorised constructions, which they claim, are tolerated by Mumbai Municipal Corporations. However, the fact remains that the use of the land for non agricultural purpose either by Karsan Jivabai or by the appellants and construction of the buildings thereon was illegal. In view of the provisions of section 117 of Transfer of Property Act Karsan Jivabai could not have sub-leased the lands leased to him in purported exercise of the provisions of section 108(j) of the said Act. In our opinion, the entry of the present appellants on the land leased to Karsan Jivabai under purported sub-lease dated 6.10.1960 itself was illegal. Even if it is assumed that the appellants were inducted by Karsan Jivabai, by executing a valid document dated 6.10.1960, the construction on the plot or its use for non agricultural purpose was in clear

breach of the terms of clause (7) of sub-lease which provides that lessee shall obtain prior permission of the Municipality or local authority for erecting the structure/structures upon the said land and it is further provided that the lessee will give consent and signature and if needed the consent of the trustees. Admittedly, none of the condition mentioned in this clause or any other clause was complied with. It is thus clear that the possession of the appellants in the said land was illegal and, therefore, both the authorities below have rightly observed that they are ‘slumlords’ within the meaning of section 2(h-a) of the Act. We have already made reference to several litigations, including the proceeding initiated and contested by the appellants, in which the appellants and other similarly placed persons lost before all the forums and having lost in all those proceedings, by way of last efforts they seem to have filed the application under section 22 of the Act seeking permission to institute a suit for eviction on the ground of arrears of rent. In the circumstances, these letters patent appeals fail and are dismissed as such. No costs.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

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